Examiner-Initiated Interview Summary	**Application No.** 10/766,993	**Applicant(s)** CHANG ET AL.	
	Examiner ANOOP SINGH	**Art Unit** 1632	

All Participants:

(1) *ANOOP SINGH*.

(2) *Matthew Hinsch*.

Status of Application: _____

(3) _____.

(4) _____.

Date of Interview: *3 February 2010*

Time: _____

Type of Interview:
☒ Telephonic
☐ Video Conference
☐ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)

Exhibit Shown or Demonstrated: ☐ Yes ☐ No
If Yes, provide a brief description: .

Part I.

Rejection(s) discussed:
Obviousness type Double Patenting

Claims discussed:
1, 4-5, 7-13, 15, 18, 22, 25 and 26

Prior art documents discussed:
US Patent 7456011

Part II.

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:
See Continuation Sheet

Part III.

☒ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.

☐ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

(Applicant/Applicant's Representative Signature – if appropriate)

Continuation of Substance of Interview including description of the general nature of what was discussed:
Applicants' representative was informed about the examiner's amendments to the claims on January 29, 2010. Applicants' representative authorized the examiners' amendments to claims that is presented in the enclosed Examiners' amendments.
During telephonic interview, applicants' representative was informed that upon rejoining of withdrawn species, claims 1, 4-5, 7-13, 15, 18, 22, 25 and 26 would be rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 of US patent 7,456011. It was indicated that '011 patent states "In other embodiments, the modified CV-N polypeptide further includes a heterologous cell wall-targeting sequence immediately to the C-terminus of the core amino acid sequence. The cell wall-targeting sequence comprises from the N-terminus to the C-terminus in the following order: a cell wall-associated sequence, the sequence of LPQ(S/A/T)(G/A), and a hydrophobic amino acid sequence. In some exemplary embodiments, the cell wall-targeting sequence comprises the sequence of LPQSG (SEQ ID NO:25), LPQAG (SEQ ID NO:26), or LPQTG (SEQ ID NO:27). In other exemplary embodiments, the cell wall-targeting sequence comprises the amino acid sequence of SEQ ID NO:11 or SEQ ID NO:12". This means that the modified cv-n protein of claim 1 could also include the cell wall targeting sequences of the claims of '993 application. It was further indicated that '011 patent states: the polynucleotide sequence encoding a modified CV-N polypeptide can be altered to coincide with the preferred codon usage of a particular host cell, e.g., a Lactobacillus cell. Thus, breadth of the claims in patent '011 embrace "modification" to include altering codons with in the cv-n to match LB preference. In contrast , application '993 of the instant application describes that " the viral pathogen is a human immunodeficiency virus (HIV). In some embodiments, the biologically active protein is CD4 or an HIV-binding fragment of CD4. In some embodiments, the biologically active protein is 2D-CD4. In some embodiments, the biologically active protein is cyanovirin-N (CV-N) or a virus-binding fragment of CV-N. In some embodiments, the viral pathogen is herpes simplex virus. In some embodiments, the biologically active protein is herpes simplex virus entry mediator C (HveC) or a virus-binding fragment of HveC (see para 14). The polynucleotide sequence encoding a particular polypeptide can be ith the codon usage of a particular host. For example, the codon usage of Lactobacillus be used to derive a polynucleotide that encodes a polypeptide of the ses preferred Lactobacillus codons. The frequency of preferred codon host cell can be calculated by averaging the frequency of preferred ge number of genes expressed by the host cell. This analysis is perferably limited to genes that are highly expressed by the host cell. Pouwels et al. (Nucleic Acids Res. 36 (1994)), for example, provides the frequency of codon usage by highly bited by various Lactobacillus species. Codon-usage tables are also available via the internet (para. 109). The teaching of '993 clearly shows that the instant application contemplates a modified cv-n that is modified to match LB codon usage preference.
Since both sets of claim overlap in scope including an LB expressing a cv-n modified to LB codon usage, there is an ODP issue. The anchor and general LB construct also overlap. Examier also reminded applicants of portion of MPEP § 2111.01. that states" those portions of the specification which provide support for the patent claims may also be examined and considered when addressing the issue of whether a claim in the application defines an obvious variation of an invention claimed in the patent. In re Vogel, 422 F.2d 438, 441-42, 164 USPQ 619, 622 (CCPA 1970).
In response, applicants' indicated that they would consider filing terminal disclaimer.

/Anoop Singh/
AU 1632